IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3591 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes

3 to 5 No

SARDAR SAROVAR NARMADA NIGAM LTD

Versus

VANAND RAMJIBHAI BABULAL

Appearance:

M/S MG DOSHIT & CO for Petitioners

MRS DT SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 02/04/97

ORAL JUDGEMENT

By this petition Sardar Sarovar Narmada Nigam Limited has challenged the award of the labour court, Surendranagar dated 24.1.1994 by which retrenchment of two of its workmen who are respondents in this petition was held to be invalid and they were directed to be reinstated without backwages and seniority with effect from 14.8.1991, the date on which the workmen raised the

dispute about their retrenchment.

2. Brief facts which emerge from the record of the case and cannot be disputed are: that while respondent No. 1 was appointed on 21.10.1989, respondent No. 2 was appointed on 21.1.1990 they were discharged from service on 20.6.1990 both had not completed one year's continuous service for the purpose of invoking the provisions of section 25F of the Industrial disputes Act. However, the Tribunal found that there was breach of provisions of Section 25G inasmuch as respondents were not junior most persons in the cadre to be discharged on 20.6.1990 and also that after discharging the respondents, new persons were appointed in their place which was in violation of Section 25H. Since retrenchment had taken place on 21.6.1990 and the dispute had been raised by giving notice only on 14.8.1991 and respondents were found to be gainfully employed during the period of retrenchment, backwages were not awarded and continuity of services was not granted but seniority was to be counted with effect from 14.8.1991 amongst same category of workmen.

3. The primary contention of the petitioners raised in this petition is that the workmen being not in employment for a continuous period of one year within the meaning of Section 25B, there cannot be violation of provisions concerning retrenchment under Chapter V-A.

4. On a careful reading of the scheme of Chapter V-A of the Act it is to be seen that Section 25F which provides condition precedent to retrench the workman envisages for its applicability that the workmen employed in an Industry must be in continuous service for not less than one year under the employer for attracting its operation while retrenching a workman. However, section 2 (oo) which defines retrenchment does not circumscribe the meaning of retrenchment with relation to such employees only who are in service under the employer for not less than one year. On the other hand retrenchment has been defined in widest possible term to mean termination by the employer of the service of a workman for any reason whatsoever subject to exception mentioned in sub-clause (a),(b),(bb) and (c). Therefore, any termination to be termed as retrenchment is not conditioned by existence of one year's continuous employment under the employer, but if a workman is in continuous service of not less than a year then before a valid retrenchment can take place, certain conditions are to be fulfilled. Section 25F which requires two conditions for valid retrenchment giving of one month's notice or salary in lieu of such notice and retrenchment

compensation to be paid at the time of retrenchment is applicable only to the case of workmen who are in continuous service for not less than one year under the employer.

5. However, Section 25G which is equally relevant for considering whether any retrenchment is valid or not is not inhibited by the conditions of any period of continuous service under the employer. It encompasses within its ambit any termination which can be called termination within the meaning of Section 2(oo). The requirement of section 25G is one of the principles of equality and fairness emanating from Article 14 of the Constitution. Requirement of section 25G is that except for specified reasons retrenchment of a person who is in employment for longer period than others cannot take place while retaining in service persons with shorter period of service. It embodies the principle in case of termination simpliciter the workman who has the lesser span of service must first go. Therefore, for operation of section 25G, requirement of continuous service for a fixed period is not pre condition and termination of every kind which is not falling in exception provided under Section 2(oo) would be governed by the rule emanating from Section 25-G and if it is not in accordance with it, it must be held to be invalid.

6. Likewise, for operation of Section 25H which operates at post retrenchment stage after valid retrenchment has taken place at a time when an employer is proposing to take into his employ any person, at that stage the retrenched workman has right that he is offered an opportunity to offer himself for reemployment and if he offers himself for such reemployment he has a preferential right to be appointed. Provisions of section 25H is also not inhibited with the condition of minimum period of continuous service prior to retrenchment. The provision applies to all retrenchments alike. The rule of offering opportunity of reemployment is the same as is inherent in Section 25G, namely, senior most amongst retrenched workman has to be offered opportunity to the new employment in preference to the junior persons amongst the retrenched. Provisions of Section 25F,G and H operate notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment Standing Orders Act, 1946 as per Section 25J of the Act.

7. With the aforesaid position emerging from the scheme of Section chapter V-A, if one is to consider the

undisputed fact it is apparent that even accepting the case about validity of retrenchment, as per the admission of the petitioners' own witnesses, new hands were appointed to replace the respondents after the retrenchment, obviously retrenchment was to make room for new appointments without offering opportunity to the retrenched workmen to such employment. It was not even the case of the employer that before employing new hands, opportunity to the retrenched workmen for offering themselves for reemployment was made available to them. This alone is sufficient to sustain the final directions given by the tribunal.

8. In the circumstances, it is also apparent that there is no substantial failure of justice and interference under Article 226 is not warranted. The petition accordingly has no merit and is dismissed. Rule is discharged. No costs.

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